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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,867	03/22/2002	Michael Lehner	R37032	6759
7590	04/07/2004		EXAMINER	
Walter Ottesen Patent Attorney PO Box 4026 Gaithersburg, MD 20885-4026				DAVIS, OCTAVIA L
		ART UNIT	PAPER NUMBER	2855

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/088,867	MICHAEL LEHNER
	Examiner	Art Unit
	Octavia Davis	2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 January 2004.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 8 and 9 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz et al in view of Janetzke et al.

Regarding claims 8 and 9, Dietz et al disclose a method for detecting combustion misfires comprising considering the position of segments relative to a reference point (TDC) of the movement of the piston of an engine 1 which are dependent upon an operating parameter of the engine (See Col. 3, lines 26 - 37 and 59 - 61), evaluating segment times in which a shaft of the engine passes through the segments (See Col. 3, lines 21 - 25 and 39 - 54) and an expansion of the angle segments is considered and the angle expansion of the angle segments is dependent upon an operating parameter of the engine (See Cols. 3 and 4, lines 47 – 54) but does not disclose that the operating parameter is one of an engine load or an engine rpm. However, Janetzke et al disclose a method for detecting combustion misfires comprising segment times which are dependent upon an operating parameter of the engine including engine load (See Col. 5, lines 29 – 47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dietz et al according to the teachings of Janetzke et al for the

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purpose of, more reliably detecting misfires for critically operating ranges (See Janetzke et al, Col. 2, lines 25 – 31).

***Response to Arguments***

3. Applicant's arguments with respect to these claims have been considered but are moot in view of the new grounds of rejection.

4. Any inquiry concerning this communication should be directed to Examiner Octavia Davis at telephone number (571) 272 - 2176. The examiner can normally be reached on Monday - Thursdays (9:00 - 5:00), Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz, can be reached on (571) 272 - 2180. The fax phone number for the organization where this application where this application or proceeding is assigned is (571) 273 – 2176.

OD/2855

3/29/04



EDWARD LEFKOWITZ  
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